IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

Bail Appl..No. 3939 of 2007()

[CRIME NO.60/2007 OF ELATHUR POLICE STATION]

PETITIONERS/ACCUSED

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1. RAJESH KUMAR, S/O. SEKHARAN,
   CHERUVALAPPIL HOUSE, ATHANIKKAL P.O.,
   WEST HILL, KOZHIKODE DISTRICT.

2. SUDHEER, S/O. KUTTAN,
   VELLIL THAZHAM, P.O.EDAKKAD, PUTHIYANGADI,
   KOZHIKODE DISTRICT.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: COMPLAINANT & STATE

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1. SUB INSPECTOR OF POLICE,
   ELATHUR POLICE STATION, ELATHUR.

2. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.3939 of 2007

Dated this the 29th day of June 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 and 2 and they face allegations inter alia under Section 452 read with 149 I.P.C. That is the only non-bailable offence alleged against the petitioners. The crux of the allegations against the petitioners is that they along with ten other accused persons were members of an unlawful assembly who trespassed into the house of the defacto complainant on account of political animosity and unleashed an attack with dangerous weapon causing hurt to the victim. The alleged offence took place on 27/3/2007. The petitioners apprehend imminent arrest.

2. The learned Public Prosecutor on instructions submits that final report has already been filed arraying the petitioners as accused 1 and 2. In these circumstances, there are no circumstances to justify invocation of the jurisdiction under Section 438 Cr.P.C. The petitioners may be directed to resort to

the ordinary and normal procedure of appearing before the learned Magistrate. They may then seek regular bail, it is submitted.

3. I find merit in the submissions of the learned Public Prosecutor. Final report having already been filed. The petitioners can certainly appear before the learned Magistrate and seek regular bail. In Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in these cases.

4. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which they could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application

for bail to be filed by the petitioners on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339].

5. In the result, this petition is dismissed but with the specific observation that if the petitioners surrender before the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007